

***City of Burien***

**BURIEN PLANNING COMMISSION MEETING**

November 13, 2007

7:00 p.m.

City Council Chambers

**MINUTES**

**Planning Commission Members Present:**

Stacie Grage, Robert Simpson-Clark, Jim Clingan, Jon Newton, Michael Sumner

**Absent:**

Janet Shull, Rebecca McInteer

**Others Present:**

Scott Greenberg, planning director

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**Roll Call**

Vice Chair Grage called the meeting to order at 7:04 p.m. Upon the call of the roll all commissioners were present with the exception of Chair Shull and Commissioner McInteer.

**Agenda Confirmation**

Motion to approve the agenda as printed was made by Commissioner Newton. Second was by Commissioner Clingan and the motion carried unanimously.

**Public Comment**

**Approval of Minutes**

- A. October 9, 2007
- B. October 23, 2007

Motion to approve both sets of minutes as submitted was made by Commissioner Simpson-Clark. Second was by Commissioner Sumner and the motion carried unanimously

**Public Hearing**

- A. Zoning Code Amendments
  - *Miscellaneous Amendments and Accessory Dwelling Units*

Commissioner Grage opened the public hearing.

**Ms. Brooke Berg, 15218 22<sup>nd</sup> Avenue SW**, said she has experienced grief in the application of the existing code. She encouraged the commission to review the City's file of her case, which is probably quite large. She said during her lengthy struggle with the City she learned of several properties with ADUs in her neighborhood and around the city that conflict with the parameters set by the existing code. Councilmember Shaw should be applauded for his effort to ameliorate the code in order to provide for

good citizens and valuable community members who may be caught in the bureaucratic mess. The overall objective of local government should be reviewed if Burien is to be a welcoming place.

**Mr. Gerald Robison, 1228 SW 119<sup>th</sup> Street**, noted that the existing ADU regulations outlay a number of existing units and suggested that it makes no sense at all to do that. If the concern is that going forward people will build structures resembling duplexes, then some kind of limitation on adding ADUs in new structures might make sense. With regard to the Northeast Planning Area, he stated that the existing code adopted for the area that was intended to spur development is not working. A new approach is needed.

With no other members of the public wishing to address the commission, Commissioner Grage closed the public hearing.

### **Old Business**

- A. Zoning Code Amendments
  - *Miscellaneous Amendments and Accessory Dwelling Units*

Planning Director Scott Greenberg informed the commissioners that they could elect to act on the amendments or hold them over for additional discussion on November 27.

Mr. Greenberg reviewed with the commission the requested changes to the amendments, beginning with item 3 on the third page of his memo, criteria for modification of plans approved through a Type 1, 2 or 3 review process. He noted that the commission had requested language allowing the area devoted to use or structure to be expanded by 10 percent or less. The new language clarifies the baseline against which the 10 percent is measured, which is what was previously approved.

With regard to the amendment relating to drive-throughs in the Downtown Commercial zone, Mr. Greenberg noted that Option 1 allows drive-throughs adjacent to pedestrian-oriented streets, provided design standards are met. Option 2 would allow drive-throughs along 4<sup>th</sup> Avenue SW but prohibit them along SW 152<sup>nd</sup> Street. Option 3 is new and mirrors the current law, which disallows drive-throughs on both 4<sup>th</sup> Avenue South and SW 152<sup>nd</sup> Street. Option 3 would trigger the need to clarify the design guidelines, BMG 19.47.030.2.M, as shown in the memo.

Answering a question asked by Commissioner Newton, Mr. Greenberg explained that Ms. Berg has an ADU in an existing detached building on a lot that is about 6,800 square feet in the RS-12,000 zone. Under the current regulations, had Ms. Berg come in before April 23, 2003, she could have had the unit legalized, provided it met all other applicable health and safety requirements. By not coming forward by that date, Ms. Berg lost that option. The current code requires 18,000 square feet of land in the RS-12,000 zone in order to have a detached ADU. Her case is what caused the proposed amendment, which was initiated by the City Council. If the proposed amendment is adopted, Ms. Berg's ADU can be legalized.

Mr. Greenberg confirmed for Commissioner Clingan that ADUs constructed since the City incorporated will become legal if the amendment is approved.

Commissioner Simpson-Clark said the question is whether or not the City should limit detached ADUs on small lots to the conversion of existing buildings, or if new detached ADUs on a small lot should be allowed. He said he would not argue with allowing the conversion of an existing building, but would not want to see new ADUs permitted on a small lot.

Mr. Greenberg said the City recently permitted a new home that included an ADU. Commissioner Simpson-Clark said his concern is avoiding de facto duplex zoning in single family zones. The only exception is that the property owner must occupy one of the units; absent that restriction, there is very little difference between duplex multifamily zoning and single family zoning. Mr. Greenberg said there is a floor area limitation. Attached ADUs cannot exceed 1,000 square feet, and detached ADUs cannot exceed 800 square feet. There have been some people seeking to know how close they can come to having an ADU defined as attached when in fact there is only a breezeway between the main building and the ADU. By definition, attached units must have a common wall, but some have asked how much of a common wall is required. The proposed amendment will make everything much easier to administer.

Commissioner Simpson-Clark commented that technically attached units are not considered ADUs if the door is never locked. There is nothing in the law that says a house cannot have several bathrooms and more than one kitchen. The unit becomes an ADU only when the door to the main building is closed.

From the audience, Mr. Robison said that has not been his experience in Burien and King County when representing clients. The fact is where there is a separate entrance, a separate bathroom and additional cooking facilities, code enforcement views it as a second unit, even if there is an internal connection between the two units.

Commissioner Newton said he knows a family with a two-story house with the kitchen on the second floor. After the children were grown and moved out, the parents put in kitchen facilities on the first floor because for health reasons they were not able to negotiate the stairs. No one else is living in the house. He asked if the fact that there are two kitchen facilities means the house is a duplex.

Commissioner Simpson-Clark suggested the issue is enforceability. The definitions in the code may help to sort things out, but the real question is what should be done about it. The primary benefit to detached units is that there is very little gray area; a detached unit with a bathroom and a kitchen is clearly an ADU.

Mr. Greenberg said the Zoning Code defines a dwelling unit as a structure with one or more rooms designed for occupancy by a person or family for living and sleeping purposes containing kitchen facilities and rooms with internal accessibility for use solely by the dwelling party. A two-level home with kitchen and living facilities on both floors could potentially be said to include an ADU if the two floors were separated by a closed door.

Commissioner Newton asked how the code treats several families living in the same house sharing facilities. Mr. Greenberg said the code defines family as an individual, two or more persons related by blood or marriage, or up to eight unrelated persons. Where the residents of a building are all related by blood or marriage, the City has no limitation on family size.

Motion to recommend to the City Council approval of Zoning Code amendment number 11 based on the staff memo dated November 5, 2007, and the public hearing on November 13, 2007, was made by Commissioner Newton. Second was by Commissioner Simpson-Clark and the motion carried unanimously.

Motion to recommend to the City Council approval of Zoning Code amendment number one based on the staff memo dated November 5, 2007, and the public hearing of November 13, 2007, was made by Commissioner Newton. Second was by Commissioner Sumner and the motion carried unanimously.

Motion to recommend to the City Council approval of Zoning Code amendment number two based on the staff memo dated November 5, 2007, and the public hearing of November 13, 2007, was made by Commissioner Newton. Second was by Commissioner Clingan and the motion carried unanimously.

Motion to recommend to the City Council approval of Zoning Code amendment number three based on the staff memo dated November 5, 2007, and the public hearing of November 13, 2007, was made by Commissioner Newton. Second was by Commissioner Simpson-Clark and the motion carried unanimously.

Motion to recommend to the City Council approval of Zoning Code amendment number four based on the staff memo dated November 5, 2007, and the public hearing of November 13, 2007, was made by Commissioner Newton. Second was by Commissioner Sumner and the motion carried unanimously.

Motion to recommend to the City Council approval of Zoning Code amendment number five based on the staff memo dated November 5, 2007, and the public hearing of November 13, 2007, was made by Commissioner Clingan and the motion carried unanimously.

Motion to recommend to the City Council approval of Zoning Code amendment number six, incorporating Option 3, based on the staff memo dated November 5, 2007, and the public hearing of November 13, 2007, was made by Commissioner Simpson-Clark. Second was by Commissioner Newton.

Answering a question asked by Commissioner Clingan regarding Option 3, Mr. Greenberg explained that there are two conflicting code sections that lead to a Zoning Code interpretation. There is a statement in the use zone chart that conflicts with the design guidelines for the downtown. The use zone chart says drive-through facilities are prohibited adjacent to Class A pedestrian-oriented streets, but clarifies that the prohibition does not apply to drive-through banks. By definition, the Class A pedestrian-oriented streets are 4<sup>th</sup> Avenue SW and SW 152<sup>nd</sup> Street. The design guidelines seem to allow drive-throughs anywhere in the downtown, including on the Class A pedestrian-oriented streets, provided certain standards are met. The proposal retains the prohibition to Class A streets and references that prohibition in the design guidelines.

Commissioner Simpson-Clark said he proposed Option 3 because the designation of Class A pedestrian streets and the design guidelines were crafted with a great deal of thought and public input. The conflict that exists was inadvertent.

The motion carried unanimously.

Motion to recommend to the City Council approval of Zoning Code amendment number seven based on the staff memo dated November 5, 2007, and the public hearing of November 13, 2007, was made by Commissioner Newton. Second was by Commissioner Clingan and the motion carried unanimously.

Motion to recommend to the City Council approval of Zoning Code amendment number eight based on the staff memo dated November 5, 2007, and the public hearing of November 13, 2007, was made by Commissioner Newton. Second was by Commissioner Sumner and the motion carried unanimously.

Motion to recommend to the City Council approval of Zoning Code amendment number nine based on the staff memo dated November 5, 2007, and the public hearing of November 13, 2007, was made by Commissioner Newton. Second was by Commissioner Simpson-Clark and the motion carried unanimously.

Motion to recommend to the City Council approval of Zoning Code amendment number 10 based on the staff memo dated November 5, 2007, and the public hearing of November 13, 2007, was made by

Commissioner Newton. Second was by Commissioner Simpson-Clark and the motion carried unanimously.

Mr. Greenberg said the recommendation of the commission will be carried forward to the City Council for action.

B. Comprehensive Plan Amendment 2007-6  
– *Retail Use in SPA-4*

Mr. Greenberg noted that the commission recommended to the City Council that one of the Comprehensive Plan amendments for 2007 should be focused on allowing retail uses in the Northeast Redevelopment Area. He said the council received the recommendation and voiced concern about large retail uses being allowed in the special planning area, especially those types of uses that may compete with the downtown.

Mr. Greenberg suggested that rather than focus on building size, design guidelines and parking issues, the commission should seek to come to agreement on what is to be achieved by the Northeast Redevelopment Area. One approach would be to craft a policy allowing retail uses in SPA-4 but limiting their overall size to a specific number, such as 120,000 square feet.

Commissioner Newton asked if there are any vision statements that offer guidance. Mr. Greenberg said one such statement calls for a thriving, attractive and customer-friendly city center and business areas. Another mentions a community with land use patterns that bring together individual business and community goals.

Commissioner Simpson-Clark asked if there is a statutory definition of retail, saying he assumed that the business park designation given to SPA-2 included a retail element. Mr. Greenberg said the kind of retail currently allowed in the Northeast Redevelopment Area can be termed “supportive.” The types of uses include delis and dry cleaners. Commissioner Simpson-Clark said he recently purchased a large number of O-rings from a company that ostensibly operates as a warehouse; they do have a will-call window and he said he was able to purchase the product. He asked if that sort of transaction is considered retail.

Commissioner Clingan said his opinion was that such businesses operate primarily as wholesalers but allow for some small retail transactions.

Mr. Greenberg said currently the only retail uses permitted in Northeast Redevelopment Area are convenience retail and eating and drinking establishments. Even so, those uses are only permitted as accessory uses related to or supportive of the primary use of the site. The total gross floor area of the retail aspect is limited to 20 percent of the primary use. The regulations as they are would not prohibit a warehouse use from having a will-call window and certain over-the-counter sales. A pure retail use would not be allowed unless it was devoted solely to serving the businesses in the area.

Mr. Greenberg said the concerns of the City Council are with certain types of big box retail, specifically broad-spectrum retail uses that could be competition for existing smaller retailers in the community. They are not generally concerned with single-user large-format uses like Circuit City.

Commissioner Simpson-Clark said he thinks the difference between those types of uses is very narrow. He said, as the owner of a jewelry store, he would not be concerned if a chain-store jewelry store were to move into and be competitive in the area closer than Southcenter. He said he would be more compelled to include prohibitions against a myriad of smaller retail stores.

Commissioner Sumner said he would prefer to see tax dollars stay in Burien, even if that means allowing large-format retail uses, including Wal-Mart, to locate in the Northeast Redevelopment Area.

Commissioner Newton said his research has found that for the most part small businesses are energized by having a Wal-Mart-type use move into their area. The small businesses are forced to look at what they are doing and adjust accordingly to meet the needs of the community. Mr. Greenberg pointed out that Wal-Mart, in fact, often will give local business communities seminars on how to compete successfully against them. The large-format retailers have a niche that they fill, and most realize they are simply not able to provide the same kind of customer service that small retailers can.

Commissioner Newton said the fact is that Burien serves as a nexus to the south end. Anyone living in Burien who wants to can drive to the Wal-Mart at Renton or the Target at Southcenter. Disallowing big box retail uses in the Northeast Redevelopment Area will not change established shopping patterns; allowing them in that area may encourage shoppers to keep their tax dollars in Burien.

Commissioner Clingan said the current approach clearly has not brought about the desired redevelopment of the area. He said he can see no benefit to limiting what can be developed in the area or who can develop there. For its part, the commission should keep things as open as they can be.

Commissioner Simpson-Clark said one of the first things talked about in discussing development in the Northeast Redevelopment Area was the concern over generating low employment/low tax base businesses. It appeared in the beginning, however, that the Port of Seattle and the FAA were restricting the ability of the City to allow uses that attract a large number of people, leaving out entirely the option for large format retail uses.

Mr. Greenberg said it is true the Port purchased different properties with different pots of money, some of which had strings attached to them. Accordingly, certain properties can redevelop only with uses that will support airport operations. There are also some FAA restrictions that will not allow high concentrations of people, such as directly under the flight path.

Commissioner Simpson-Clark said the proposed amendment recognizes that there may be a lot of restrictions on the use of the area. He added, however, that the City should not second guess those restrictions. It is possible that higher powers will ultimately disallow a proposed Wal-Mart in the area, but that decision should not be up to the City to make.

Commissioner Newton agreed, adding that decisions of that sort will have to be made at a much higher level.

There was agreement on the part of the commissioners to hold to its original recommendation.

Mr. Greenberg informed the commission that the City applied for and received a \$75,000 grant from the state Department of Community Trade and Economic Development. The grant will be used to develop a redevelopment strategy for the Northeast Redevelopment Area. Because the property in the area is held by a variety of parties, it is not possible to do a master plan in the traditional sense. The redevelopment strategy is essentially one step short of a master plan; it will include concepts, strategies and implementation measures to jumpstart redevelopment of the area. The City likely will work with the Port to master plan its properties, and the focus will be on what can be done to incentivize and encourage redevelopment. The two-acre minimum lot size restriction will be reviewed to see if it is serving as an impediment.

Commissioner Clingan asked about the Lora Lake agreement. Mr. Greenberg said he is aware that the city manager signed something but said he has not seen it. From what was described at the council meeting a week ago, all of the points of the agreement were in the press release. Commissioner Clingan asked if the portion of the Northeast Redevelopment Area that is south of the freeway is off of Burien's table. Mr. Greenberg said the Lora Lake Apartments property is certainly off the table, but the vacant property to the south of it is still potentially in play.

Motion to recommend to the City Council that the proposed Comprehensive Plan amendment 2007-6 regarding retail use in SPA-4 allow stand-alone retail uses without specific limitations on building or use size, and that large retail establishments be allowed as discussed in the commission's previous recommendation to the City Council, was made by Commissioner Newton; second was by Commissioner Sumner and the motion carried unanimously.

**New Business** – None

### **Director's Report**

Mr. Greenberg said there are no remaining issues on the commission's plate for the remainder of 2007. There was agreement to cancel the November 27 and December 11 meetings.

Commissioner Clingan noted that in the commission packet there was a copy of a letter received from John Lievero that was dated October 1 that appears to have been received on November 2. He asked if the letter had been walked in to City Hall or mailed. Mr. Greenberg said he did not know; the time stamp of November 2 is the date the letter was actually received. The letter was addressed to the Planning Commission, which is why it was copied and included in the commission packet; it will also be provided to the City Council.

### **Adjournment**

Motion to adjourn was made by Commissioner Clingan. Second was by Commissioner Sumner and the motion carried unanimously.

Commissioner Grage adjourned the meeting at 8:23 p.m.

Approved: \_\_\_\_\_

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Janet Shull, chair  
Planning Commission